A much less desirable approach would be to permit an individual owner to install a satellite antenna on limited common elements (exclusive use areas) serving his individual unit, but not on other common elements. The owner already has the exclusive or nearly exclusive use of these limited common elements. Therefore, other owners will not be injured by the individual owner's use of the limited common element. The owner will, of course, be responsible for additional maintenance costs and should be liable for any property or personal injury damage caused by the installation of the satellite antenna. Because these requirements will not impair access to service, the community association should still be entitled to regulate the method of installation on common property, since it is responsible for the common property and the installation may impact on other owners. However, this solution would balance the individual's right of absolute access and the community association's need to maintain and regulate the common property.

If the FCC Proposed Rule prohibits restrictions on an individual owner's installation of a satellite antenna on common property, notwithstanding the obvious Constitutional and practical problems, then community associations must be allowed to regulate the installation and maintenance of individual equipment, since the community association is liable for the management of and damage to the common property. Community associations must be permitted to require notification of any installation of a satellite antenna on common property. Installation of several owners' equipment would proceed much more efficiently and effectively with a coordinated installation plan. The association could help resolve disputes among owners who need to place their equipment in areas that impede access by other owners, or on other owners' limited common elements. If the FCC rule allowed community associations to

choose to provide access to satellite service, then the community association would be responsible for all installation and maintenance, and there would be no need for this notification process.

The community association should also be able to specify acceptable methods of installation to ensure that installation does not damage the building. Coordinated installation managed by the community association would help provide access to the maximum numbers of owners and residents possible.

As an example of various possible approaches, CAI suggests the following ideas:

1. In community associations mostly comprised of common property, the association might designate certain common areas for satellite installation. Individuals can then install equipment on such designated areas, bearing all of the costs associated with the installation of such equipment.

2. In community associations mostly comprised of common property, the association might require all owners installing satellite antennas on common property to remain liable for any damage to the common area or limited common elements due to the installation, usage, and maintenance of satellite antennas.

3. In community associations mostly comprised of common property, the association might collect a reasonable special assessment from owners installing equipment on common areas or on limited common elements, to pay for additional maintenance services to the property upon which satellite antennas is installed.

4. In all community associations, the associations might regulate the installation sites to minimize violation of architectural controls.

VI. CONCLUSION

Section 25.104(f), as currently drafted, is consistent with the intent of Congress to remove barriers to access to satellite antennas. CAI, ARDA, and NAHC believe that the language which limits the FCC's preemption of private restrictions "to the extent" that they impair access to telecommunications is basically acceptable, with the caveats listed below. CAI, ARDA, and NAHC support the FCC in distinguishing satellite antennas which are over one meter in diameter and preserving the right of community associations to enforce restrictions on such antennas.

A. The Proposed Rule Does Not Permit Individuals to Install Telecommunications Equipment on Common Property

However, CAI, ARDA, and NAHC still have the following concerns. The FCC rule may be interpreted to have a fundamental impact on established private property rights. If an individual owner of a condominium unit is allowed to install a satellite antenna on common property without the consent of the association or its members, then the association's interests in common property will be abrogated. The individual would gain extensive property rights

in property he does not own, to the detriment of others who possess ownership rights in the same property. In cooperatives and in planned communities, installing equipment on common property would give an individual owner rights in property in which he has no interest. The associations may be exposed to liability for damage caused by installation and the equipment itself that the association cannot control. Congress surely did not intend to fundamentally alter these property rights; to do so would be unconstitutional. Therefore, the FCC should clarify that the rule only applies to the installation of a satellite antenna under one meter in diameter on individually-owned property.

B. Allow Associations which Make Satellite Access Available to all Residents to Enforce their Rules

If the distinction between common property and individually-owned property is clarified by the FCC in the Proposed Rule, then there is another possible solution to the problem of not being able to install satellite antennas on common property. Associations may choose to make satellite access available to all residents, even those who are now barred from access by the location of their units. If the FCC allows associations to enforce their restrictions if the associations make access available, the method of compliance should be left to the individual associations. Associations who choose to make such services available will do so in a flexible, creative way, lessening the FCC's enforcement burden.

In conclusion, CAI, ARDA, and NAHC support the goal of providing owners and

residents of homes in community associations with the ability to receive video programming services over a satellite antenna less than one meter in diameter. The Proposed Rule, however, must address and avoid the potential negative impact on association communities, owners, and residents. The public purpose of Section 207 of the Telecommunications Act and the Proposed Rule, Section 25.104(f), can be met without precluding the enforcement of restrictions on the installation of satellite antennas on common property within community associations. If community associations make satellite access available to their residents, then such community associations should retain the right to impose reasonable restrictions on the installation of satellite antennas. CAI, ARDA, and NAHC also maintain that community associations should retain control over common property; individual owners should install satellite antennas either on their individually-owned property or on limited common elements to which the owners have exclusive access.

Community associations are unique and specialized entities, now housing over 32 million Americans. The Proposed Rule must address the concerns of these homeowners. The rule as currently written may be interpreted to create severe problems for community associations to comply. The FCC should ensure that access to satellite services is promoted more efficiently by adopting a performance-based approach, permitting community associations to make satellite access available, and allowing those associations which do so to enforce their deed restrictions. CAI, ARDA, and NAHC therefore respectfully request that the FCC accept and implement the changes to the Proposed Rule suggested in our Comments.

CAI, ARDA, and NAHC appreciate the FCC's attention to these special concerns.

APPENDIX A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Preemption of Local Zoning	)	IB Docket No. 95-59
Regulations of Satellite Earth	)	DA 91-577
Stations	)	45-DSS-MISC-93
	)	

AFFIDAVIT OF JAMES N. REINHARDT

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

JAMES N. REINHARDT, being first duly sworn on oath, deposes and says that:

1. Affiant is a licensed architect in the State of Hawaii and a past president of the Hawaii Chapter of the American Institute of Architects.

2. Affiant has represented numerous clients with respect to the installation, maintenance and repair of all types of roofing systems.

3. Affiant has represented one client in a matter in which the installation of an antenna resulted in leaks into the building.

4. Installation of a satellite dish on the roof would require that holes be drilled into the roof or the walls of the building so that the dish can be connected to the apartment.

5. There is an increase in the cost of reroofing a building with satellite dishes on the roof because the roofer would be required to work around the satellite dish. The increase in cost would depend on the number of satellite dishes on the roof and on the details of the connections.

6. There is an increased likelihood of leaks in the roofs and walls whenever penetration through a roof or wall occur.

7. The cost of maintaining the penetrations through the roof is greater than the cost of maintaining the normal surface of the roof or wall.

8. Sealants used to seal holes in the roof and walls will typically degrade or shrink relatively quickly in comparison to the roof or walls.

9. Roof surfaces deteriorate more rapidly when walked on. The more these surfaces are walked on, the more rapid the deterioration will be, causing the life of the roof to be shortened.

Further Affiant sayeth naught.

JAMES N. REINHARDT

Subscribed and sworn to before me this
12th day of April, 1996.

Notary Public, State of Hawaii

My commission expires: 12/15/98

PETERSON

April 10, 1996

RE: FOOT TRAFFIC ON ROOFING PRODUCTS

To Whom It May Concern,

The following information is being provided by Peterson Roofing, Inc., a roofing company specializing in single family residential reroofing as well as homeowner association reroofing projects. Peterson Roofing, Inc. is a full service roofing contractor having been in business since 1969. The forthcoming is a general understanding of product warranty and workmanship warranties in relationship to roofing products and roofing installations.

A general statement Peterson Roofing, Inc. would make to the homeowner or association having recently installed a new roof would be to at all cost minimize the amount of foot traffic on your new roofing system. Roofing materials are derived from basic materials such as asphalt, wood, fiber cement, concrete, clay, slate and metal such as aluminum and copper. Even though there are numerous building materials utilized in manufacturing roofing products, the manufacturer and the labor force do share some common recommendations regarding maximizing the life of your roofing system.

With respect to the manufacturer, manufacturers extend warranties to owners of the roofing system with one basic understanding that is uniform throughout the industry. A roof is designed to hold up for its projected life on the pretense that the roof is left undisturbed for the duration of the warranty. Such things as foot traffic, man made damage, acts of God such as hurricanes, earthquakes, tornadoes, etc. would in fact void out the manufacturers warranty. Their perspective is roofing is meant to keep water out of the structure and provide some added esthetic value to the home. It is not designed for excessive foot traffic although some foot traffic may result with respect to having a need for painters, plumbers, Christmas decorations, chimney sweeps and general maintenance on a roofing system. If in fact the product goes in the interim, it is in fact considered a defective product and is covered by the manufacturers warranty.

By comparison, there is always a labor force involved that installs a roof. Should something they installed come undone or result in a leak, then that is where workmanship warranties come into play. On the other hand if man made damage is created such as kicking off a ridge cap or poking a hole in a roofing product, that is no fault of the workmanship or the manufacturer and in turn a need for repairs would not be covered under either product or workmanship warranties and would be billed on an individual basis under the pretense of a service call.

Peterson Roofing, Inc. would like to present this final conclusive comment. If and when ever possible, to maximize the life of your roofing system, we recommend to avoid any undue need to be on your roof.

Respectfully submitted,

Jim Fox
Vice President Residential/Maintenance

c:\winword\jim\rftrfc

CORPORATE OFFICES
549 WEST CENTRAL PARK AVE.
ANAHEIM, CA 92802-1415
(714)444-4444 FAX (714) 778-4429

L. A. COUNTY
(310)533-1111
FAX (310)533-1717

SAN DIEGO COUNTY
12526 HIGH BLUFF DR., SUITE 300
SAN DIEGO, CA 92130
(619)259-8311 FAX (619)259-6661

LICENSE NO. 607872

PREMIER ROOFING

April 9, 1996

Mr. Sam Dolnick
Community Associations Institute
5706 Baltimore Dr. No. 348
La Mesa, CA 91942

Fax No. (619) 697-4854

Re: FCC Regulations
Satellite Antennas

Subject: Effect of Satellite Antennas Mounted on Roofs to Roofing Guarantees

Premier Roofing
Incorporated
9054 Olive Drive
Spring Valley
California
91977-2301
619-667-4565
619-667-1281 fax

Dear Mr. Dolnick,

In response to your request for information I am enclosing a copy of our firm's standard roof guarantee as well as a copy of a manufacturer's standard roof warranty.

As you can see, both of these guarantee forms exclude damage to the roof caused by "others". This type of phrase is intended to void the guarantee should persons other than a licensed roofing contractor install a new penetration into an existing roof system.

If condominium associations are required to permit each individual homeowner to install a satellite dish of his or her choosing on the roof (which is typically the property and responsibility of the association), I can guarantee you that any warranty which that roof may have had will have been voided.

While the contractors who typically install these types of antennas are probably very good at antenna installation, they are historically lousy roofers. The typical installation we find on many roofs is to set the antenna on top of the gravel surface, pack a little "asphalt mastic" around it, and bolt it right through the roof. As soon as the mastic dry's out the roof leaks. When we go to reroof a building with a satellite antenna located on it we have to try and track down the company who installed it and have them remove it from the roof before we can install the new roof. Needless to say, the original homeowner who installed the antenna has usually moved away and the new homeowner refuses to pay the expense of removing and replacing the antenna.

The new regulation you have described to me sounds like a true nightmare for the typical H.O.A. Should this regulation pass in it's present form I would strongly recommend that C.A.I. make every effort to have it overturned in the courts.

I hope that this information will be of assistance to you, should you have any questions please do not hesitate to call.

Sincerely,

Steve Camblin
President

PREMIER ROOFING, INC.

State Contractors License Number 689726

LIMITED WARRANTY

Upon completion of construction by Premier Roofing, Inc. and payment in full by Buyer, subject to the limitations set forth below, Premier Roofing, Inc. warrants against roof leaks caused by defective workmanship or materials for a period of FIVE years from date of installation. If a roof leak covered by this warranty occurs, Premier Roofing, Inc. will repair the roof leak at no charge to Buyer. To obtain performance of this warranty Buyer must give written notice to Premier Roofing, Inc. identifying the sales transaction by providing a copy of the original contract and the nature of the problem. Such notice should be given to Premier Roofing, Inc. at 9054 Olive Drive, Spring Valley, CA 91977-2301. This warranty is limited to roof leaks caused by defective workmanship and materials used in the roof construction or repair performed by Premier Roofing, Inc. only and does not extend to leaks caused by acts of God, intentional or negligent acts or omissions of Buyer or persons subject to Buyer's control, or in those instances where the contract or sales proposal specifically excludes any type of warranty. Leaks which originate in sheet metal air conditioning ducts and or related sheet metal work are specifically excluded from this warranty.

PREMIER ROOFING, INC. SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, WATER DAMAGE TO FLOORS, CEILINGS, INTERIOR FURNITURE OR FURNISHINGS, EQUIPMENT, DOCUMENTS OR RECORDS, MERCHANDISE WITHIN THE BUILDING OR ANY OTHER CONTENTS OF THE BUILDING, OR FOR ANY HAZARDS OR INJURY TO OCCUPANTS RESULTING FROM WATER LEAKAGE.

THERE ARE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION HEREIN, EXCEPT AS REQUIRED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR DESIGN. THE DURATION OF IMPLIED WARRANTIES SHALL NOT EXCEED THE WARRANTY PERIOD SPECIFIED ABOVE.

No other express warranty or guarantee, given by any person, firm or corporation with respect to this product will bind Premier Roofing, Inc. No employee of Premier Roofing, Inc. other than the president, is authorized to amend or change, in any way, the terms and conditions of this Limited Warranty.

This warranty gives you specific legal rights, and you may also have other rights that vary from state to state.

Buyer warrants that the structure on which the roof is to be erected has been constructed in accordance with applicable building code requirements and is suitable for the work to be accomplished by Premier Roofing, Inc. Unless otherwise specifically stated in the contract agreement, the work of Premier Roofing, Inc. on this roof specifically excludes the identification of ponding water areas or correction of same.

PREMIER ROOFING

906021

SCHULLER

Roofing Systems
Gold Shield®
Roofing System
Guarantee

Building Owner:
CHULA VISTA TOWNHOME HOA
CHULA VISTA CA 91911

Building Name:
CHULA VISTA TOWNHOMES

139 4TH AVENUE

CHULA VISTA CA 91911

Guarantee Number:FN80925290

Approved Roofing Contractor:
PREMIER ROOFING, INC.
9054 OLIVE DRIVE

SPRING VALLEY CA 91977

Term & Maximum Monetary Obligation to Maintain a Watertight Roofing System

Years 10 $
NO DOLLAR LIMIT
TOTAL SQUARES 81

Date of Completion: 12/30/94

COVERAGE
The components of the Roofing System covered by this Guarantee are:

Membrane Spec. and Type 4GNG BUR
Flashing Spec. and Type DFE-4,DFE-3WH, 580 LINEAR FEET
Insulation Type
Accessories (Type and Quantity)

... and all other components of the Owner's

Fred M. Baron, AIA ■ **Consulting Architect**
■ 5950 oberlin drive, suite 110 □ san diego, california 92121 □ (619) 535-3030 □ (619) 535-3017 fax ■

April 12, 1996

Office of the Secretary
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

SUBJECT: PREEMPTION OF LOCAL ZONING REGULATION OF SATELLITE EARTH STATIONS, FCC 96-78
IB Docket No. 96-59

Dear Secretary:

I am writing to express my concern regarding the proposed rule stating "No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter".

I was made aware of this proposed rule through the San Diego Chapter of the Community Associations Institute, of which I am a member. For the past ten years, I have provided roof consulting services, I have performed construction defect investigations, and I have served as a consultant and expert witness in homeowner and homeowner association disputes in the course of my practice as a consulting architect.

In my opinion, the vagueness of the proposed rule as it now reads would create several difficulties for community associations, as well as for individual members, and I believe the proposed rule will create a dramatic increase in homeowner/association disputes requiring resolution. Some of the concerns I have are as follows:

1. The proposed rule provides no guidelines to determine impairment of a viewer's ability to receive the services. The primary issue this will create is the need to determine whether increased cost is an impairment, since installations of such equipment that do violate an existing restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction are likely to be less expensive than installations which take these restrictions into account.

2. The proposed rule appears to permit viewers to install such equipment in violation of restrictions which would require greater than a lay person's knowledge of construction, particularly pertaining to roofing. In the many investigations of existing residential roofing I have performed, one recurring theme is the existence of unregulated installations of equipment (e.g., skylights, antennas, other electrical wiring) by individual homeowners. More often then not, these installations result in penetration of the roofing materials without proper sealing.

3. Although the proposed rule does not override *governmental* restrictions, building permits are the only governmental restrictions that come to mind, and they are not often required - and even less often obtained - for such installations. As a result, the creation of new paths for water intrusion is commonplace. In a single family dwelling, the owner does this at his/her own risk, but in a common interest development, such installations can and do result in penetrations creating paths for water intrusion in the roofs of neighboring homes under maintenance by a community association.

4. If the roof in question was under warranty, such installations will, in many instances, void that warranty for the entire building affected, not just for the installer of the satellite antenna.

5. Since the proposed rule specifically overrides restrictions which might provide some control over these installations, the only means of establishing whether or not an individual homeowner could be restricted to doing a correct installation would appear to be through the legal system, *after the fact*, by the filing of a lawsuit or initiation of an ADR procedure by the community association.

My commentary has been limited to those concerns that relate to those portions of my practice on which I provide consulting services and expert testimony. It is also my belief that many other issues on the periphery of my expertise will become the subject of future litigation if the proposed rule becomes law, such as those issues concerning the use and appearance of common property. To avoid an increase in water-related damage, homeowner/association disputes, and resulting legal costs, I recommend that the FCC reconsider this proposed rule, adopting the approach of carefully integrating the federal interest in widespread access to all forms of video delivery with the interests of the communities to be impacted.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Fred M. Baron, AIA ■ Consulting Architect
By

Fred M. Baron,
Principal Architect
#C-10786

FMB/hs
OGRRQAILTFCC.412

APPENDIX B

11 April 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning Regulations	)	DA 91-577
of Satellite Earth Stations	)	45-DSS-MISC-93
	)	FCC 96-78

Introduction

Pursuant to the Further Notice of Proposed Rulemaking released March 11, 1996, in the above captioned proceeding the Orange County [CA] Regional Chapter of the Community Associations Institute, (OCRC/CAI) submits the following Comments in response to the proposed rule as found in Section 25.104(f).

Recommendation

To that end we recommend the following change (in italics) to the proposed rule, Section 25.104(f)

"Section 25.104(f) No restrictive covenant, encumbrance, homeowners association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter *located on the viewer's undivided property interest or exclusive use area*".

Discussion

The OCRC/CAI has been active in providing services and educational guidance to our members which are composed of Community Association Board Members, On and Off site Professional Community Managers, Professional providers such as Attorneys and Accountants, and vendors such as gardeners, roofers, painters, pavers, etc. We wish to continue providing services to our members through our joint experience and educational programs. To that end we have concerns with the proposed rule and have made a recommendation above.

Our primary concern lies with the affect the proposed rule might have on Common Property as we know it under the California Davis Sterling Act, which governs community associations in our state. While several forms of ownership are allowed the primary concern is with condominium ownership.

Condominium owners do not have sole ownership of their roofs and walls. They are common property owned by, or partially by, the rest of the membership of that condominium association. A vast and potentially difficult issue arises should the Federal Government, through the FCC, attempt to overturn community property rights by asserting that, with respect to satellite dish antennas, any owner of an interest in common area has the sole right to place an antenna anywhere he may please in the common area to guarantee successful satellite TV reception. Many

condominium owners also have areas that have been designated exclusive use areas (easements) in the common property such as balconies, atriums, and yards. Again if reception is possible at all in these areas, and in some units the physical orientation may not allow reception, antennas may be permitted under the same architectural control as above for owners of sole property.

We expect that the marketplace, once they understand the configuration of condominiums and the concerns, not the least of which is maintenance, will provide products in the marketplace that provide a single antenna and individual feeds to the "black boxes" that each unique subscriber needs. As we understand it, the dish antenna provides a broadband signal which contains all channels, and the subscriber "black box" discriminates among them for viewing. Subscribership is determined at that level. The antenna unit may need a broadband amplifier to feed multiple subscribers, but only one amplifier, at the dish antenna would need to be provided. The location and provision for a shared system would be greatly eased by a multiple client system. The providers will certainly enter that market as they begin to understand it. We would certainly use our good offices to educate our condominium association members as to availability and usefulness as the market develops.

We have also contacted our roofing members and have attached correspondence from one of them as to the reality of warrantees, both roofing material manufacturer and installer. He has confirmed the ease by which any warranty can be voided, especially if every unit owner is allowed to uniquely install an antenna on common area.

Conclusion

In order to permit satellite dish antennas as universally as possible, but without overturning long established definitions of the various ownership methodologies and their attendant property rights and warranty issues we recommend that:

> **"Section 25.104(f) No restrictive covenant, encumbrance, homeowners association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter *located on the viewer's undivided property interest or exclusive use area*".**

Thank you for permitting our participation in your rule making process.

Sincerely,

ORANGE COUNTY REGIONAL CHAPTER

COMMUNITY ASSOCIATIONS INSTITUTE

Lisa Ann Dale, President

at the Direction of the Board of Directors

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning	)	DA 91-577
Regulations of Satellite Earth	)	45-DSS-MISC-93
Stations	)	FCC 96-78
	)	

COMMENTS ON FCC PROPOSED REGULATIONS

Elisha, Ekimoto & Harada is a law firm that represents hundreds of community associations in Hawaii. These community associations take different forms--some are condominium associations, some are homeowner associations, some are residential cooperatives. Each, however, has substantial problems with a blanket prohibition on restrictions against satellite dishes.

We understand that Congress adopted a provision which requires the FCC to promulgate regulations in this area. However, the FCC recognized that the legislation allows the FCC the authority to promulgate rules which consider local governments' interests in regulating health, safety and other local concerns. The FCC has not proposed regulations which consider community associations' interests in regulating, health, safety and other local concerns. This is based on the FCC's assumption that community association restrictions are only directed to aesthetic considerations. This assumption is inaccurate.

Community association restrictions on satellite dishes and other installations have many valid purposes, including the following: (1) promote the value of the property; (2) allows owners to prevent other owners from undertaking unreasonable actions on

property jointly owned by all the owners; (3) prevents increases in the cost of maintenance of the common property; and (4) protects the common property and the buildings as a whole from damage.

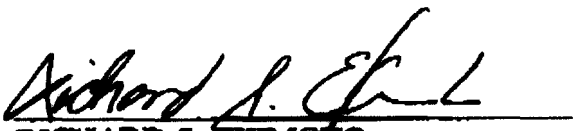
We believe that there are substantial problems with the proposed rule:

- If satellite antennas can be placed on common property of a community association by one of its members, there are substantial ownership questions. The regulation may be unconstitutional for this reason.
- The cost of maintenance of the common areas can be substantially affected by the placement of satellite dishes on the buildings. Why should all the members of the Association pay for the increased costs caused by fewer than all the members?
- How many satellite antennas can be placed on the common property? If there is insufficient space, who decides which owners can attach the antenna on the common elements?
- What happens if someone wants to place an antenna on the recreation deck? Does that person's right to the antenna supersede the other owners' right to use the recreation deck?
- Even if an antenna is not placed on common property, one antenna can conflict with another. If one antenna blocks the reception for another unit, whose rights control the placement of the satellite antennas?
- Property values could be diminished if architectural controls are not enforced.

For these reasons, we support the proposed changes suggested by the Community Associations Institute, the American Resort Development Association and the National Association of Housing Cooperatives. Thank you for listening to our concerns.

Dated at Honolulu, Hawaii, April 12, 1996.

ELISHA, EKIMOTO & HARADA
Attorneys At Law
A Law Corporation

By: 
RICHARD S. EKIMOTO
Its Vice President/Secretary

11 April 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning Regulations	)	DA 91-577
of Satellite Earth Stations	)	45-DSS-MISC-93
	)	FCC 96-78

Introduction

Pursuant to the Further Notice of Proposed Rulemaking released March 11, 1996, in the above captioned proceeding the Woodbridge Village Association (WVA) submits the following Comments in response to the proposed rule as found in Section 25.104(f).

The WVA has been active in providing architectural guidance to our members under California Legislation AB104, and while there are some differences, we wish to provide to our residents appropriate compliance with the intent of Congress as determined by the final FCC regulations.

Recommendation

To that end we recommend the following change (in italics) to the proposed rule, Section 25.104(f)

"Section 25.104(f) No restrictive covenant, encumbrance, homeowners association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter *located on the viewer's undivided property interest or exclusive use area*".

Discussion

The WVA is a Master Association with Architectural Control over 9500 residences which comprise over 20% of the City of Irvine, California, one of the premier planned communities in California and the US. Our community encompasses Single Family Detached homes (SFD), Condominiums, Planned Unit Developments (PUD), and Apartments. We believe the proposed rule allows us architectural control, per our CC&Rs on covered property, so long as the property owner is allowed to place a satellite dish antenna on their property. That is the way we have been operating under California AB104, and we have had excellent cooperation with our property owners as to location of the dish and have never denied a dish. To date our applications have only been from owners of SFD and PUD homes. Apartment dwellers, being tenants, must first negotiate dish installation rights with the Apartment owner, the owner would then consult the Master Association with respect to the actual location of the dish placement.

Condominium owners, under the California Davis Sterling Act which controls community associations, do not have sole ownership of their roofs and walls. They are common property

owned by or partially by the rest of that condominium association. In Woodbridge there are 32 separate condominium associations, each a California non profit corporation with its own separate board of directors who are charged with the control of finances, insurance, maintenance, etc. of their common area. Under our WVA CC&Rs, each condominium association determines the property rights over its property and the WVA is assigned architectural control over any granted rights. A vast and potentially difficult issue arises should the Federal Government, through the FCC, attempt to overturn community property rights by asserting that, with respect to satellite dish antennas, any owner of an interest in common area has the sole right to place an antenna anywhere he may please in the common area to guarantee successful satellite TV reception. Many condominium owners also have areas that have been designated exclusive use areas (easements) in the common property such as balconies, atriums, and yards. Again if reception is possible at all in these areas, and in some units the physical orientation may not allow reception, antennas may be permitted under the same architectural control as above for owners of sole property.

Conclusion

In order to permit satellite dish antennas as universally as possible, but without overturning long established definitions of the various ownership methodologies and their attendant property rights we recommend that the rule read:

> **"Section 25.104(f) No restrictive covenant, encumbrance, homeowners association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter *located on the viewer's undivided property interest or exclusive use area*".**

Thank you for permitting our participation in your rule making process.

Sincerely,

WOODBRIDGE VILLAGE ASSOCIATION

Don Davis, President

at the Direction of the Board of Directors

CORPORON HOEHN SVITAVSKY VAUGHTERS & EYLER LLC
ATTORNEYS AT LAW

12835 EAST ARAPAHOE ROAD
TOWER ONE - SUITE 400
ENGLEWOOD, COLORADO 80112-3940

TELEPHONE (303) 790-4103
FAX (303) 790-0927

ROBERT D. HOEHN

April 12, 1996

VIA: FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M Street - 2nd Floor
Washington, D.C. 20554

RE: IB Docket No. 95-59, Preemption of Local Zoning Regulation of Satellite Earth Stations
FCC 96-78

To whom it may concern:

This firm represents several homeowner's associations in the Denver Metropolitan Area including the Highlands Ranch Community Association, Inc. Highlands Ranch is currently the fastest growing planned community in the United States.

While it is true that many homeowner's associations have restrictive covenants restricting or prohibiting satellite dishes and antennas, a great number of associations are responding to rapidly changing technology by amending their covenants, rules and regulations to allow satellite dishes of the type provided for in the FCC's preliminary rule regarding satellite dishes (". . . less than one meter in diameter."). For instance, Highlands Ranch Community Association amended its residential improvement guidelines and site restrictions in February, 1995 in order to accommodate the new and improved technology.

The proposed rule, however, would have an adverse effect on the efforts of associations to accommodate satellite dish owners. It would also inhibit the ability of the association to protect the property rights of its member/owners. We respectfully provide the following comments. As you are aware, many homeowners prefer living in covenant controlled communities. The controls provided by the covenants maintain the property value in the community. Homeowners contract with the community association to provide such controls. An association should have the right to control the appearance and quality of installations

throughout the area governed by the association, as well as the access by all providers of services over the association's common elements. The regulation, as drafted, will make it most difficult for a association to maintain that control.

Many of our clients, including Highlands Ranch Community Association, have a long tradition of not allowing equipment of any kind in front yards or other portions of property, which can be viewed from the curb or neighboring properties, without proper and appropriate screening. Many of the properties in these communities are single family residences as opposed to condominiums and/or townhomes. Certainly, curb appeal and the ability of the homeowner's association to maintain the corresponding value is what attracts most community association owners as they consider means to protect what for most of them is their largest investment, their home. Our clients, such as Highlands Ranch, in order to be able to comply with the FCC regulations, need to receive reasonable accommodations in said regulations. Architectural restrictions should not be preempted if homeowners can receive telecommunications services without violating the architectural restrictions. The freedom of parties to contract is a right that should not be impaired. We respectfully request that in drafting the regulations the FCC take into consideration the desire of millions of homeowners to protect their property values by investing in covenant controlled communities by not preempting necessary architectural restrictions.

Thank you for considering our comments.

Sincerely,

CORPORON HOEHN SVITAVSKY
VAUGHTERS & EYLER LLC

Robert D. Hoehn

RDH:jko
cc: Jerry Winkelman, Architectural Manager
Highlands Ranch Community Association, Inc.

The Honorable Dan Schaefer
The Honorable Hank Brown
The Honorable Ben Nighthorse Campbell

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April 4, 1996.

Reference: IB Docket No. 95-59
Office of the Secretary
Federal Communication Commission
Washington, DC 20554

Dear Commissioners,

This letter is to acquaint you with some of the difficulties the private homeowner associations will face in complying with the law prohibiting restrictions on satellite dish antennae.

I am on the Board of Directors of the Hilltop Summit Condominium Association. Our homes are located about twenty (20) miles southwest of Philadelphia, Pennsylvania.

The design and construction of the buildings and the considerations of Limited Common Element ownership in our condominium presents many difficulties that will burden our community in compliance with the "equal access" law.

The attachment to this letter shows via photographs the configuration, orientation and construction of the buildings that comprise our collective homes. Our individual living spaces are approximately twenty (20) feet square.

The townhomes are arranged side by side and back to back. There are seven (7) buildings with eighteen (18) townhomes in each building (nine [9] units back to back, see PHOTO 1). There is one (1) building with ten (10) townhomes (five [5] units back to back).

There are five (5) buildings with eighteen (18) flats (nine [9] units back to back, see PHOTO 2). The flats are stacked three (3) high.

Six (6) buildings have approximately southeast-northwest exposure. Three (3) buildings have approximately east-west exposure. Six (6) buildings have homes with approximately northeast-southwest exposure. This limits access to the southern sky for more that half the homes in the condominium.

The exteriors of all buildings are maintained as commonly owned property (herein after referred to as "common elements") and the costs for <u>all</u> maintenance and <u>all</u> replacement is borne by the association via monthly paid condominium fees. The association also is responsible for all health and safety matters that pertain to the common elements.